IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.12 OF 2004.

Shri Suryakant K. Kavlekar,
major, married,
son of late Shri Kelu Kavlekar,
Resident of House No.950/1,
Kranti Nagar, Housing Board,
Colony, Porvorim, Bardez, Goa. ... Applicant.

VERSUS

STATE
Through CBI/ACB,
Panaji, Goa. ... Respondent.

Mr. S.S. Kantak with Ms. Rakhi Chodankar, Advocates for the Applicant.

Mr. Joseph Vaz, Special Public Prosecutor (CBI) for the Respondent.

CORAM; P.V. HARDAS, J.

DATE: 11TH MARCH, 2004.

ORAL JUDGMENT:

This application under Section 482 of the Code of Criminal Procedure takes exception to an Order/Letter issued by the Trial Court, calling for a Report from the Probation Officer in three Criminal cases, namely No.234/2003/C, 240/2003/C and 246/2003/C pending on the file of the Judicial Magistrate, First Class, Mapusa.

2. It is not necessary to make a detailed reference to the institution of the cases, but suffice to state that the Applicant is being prosecuted in the aforesaid three cases for offences

punishable under Section 7 of the Essential Commodities Act. It is not disputed before me by the learned counsel appearing for the respondent that the charge has not been framed in the present case. In such situation, the applicant was therefore completely taken by surprise when he received a note from the Probation Officer dated 16.09.2003 directing the Applicant to meet the Probation Officer on 29th September, 2003 at 11.30a.m. in the Office of the Directorate of Women and Child Development, Panaji, Goa and requested him to bring certain documents along with him. The applicant thereafter applied for certified copy of the purported Order passed by the learned Trial Court calling for the Report from the Probation Officer. In the meanwhile, it appears that by letter dated 15th October, 2003 the Probation Officer informed the Trial Court that the Applicant/Accused was not cooperating in the inquiry conducted by the Probation Officer. Another communication dated 4th November, 2003 was also addressed by the Probation Officer to the Trial Court, reiterating the same grievance. The learned Trial Court therefore, by an Order passed on the said letter on 18th November, 2003 directed the accused to cooperate with the Probation Officer in the submission of the Report.

3. Mr. Kantak, learned counsel appearing on behalf of the Applicant, has urged before me that in view of the fact that even a charge has not been framed against the applicant, the order calling for the Report from the Probation Officer is wholly unwarranted as the stage at which the Trial Court has called for the Report is extremely premature.

4. Mr. Vaz, learned counsel appearing on behalf of the respondent has very fairly stated that the the stage at which the Trial Court has called for the Report from the Probation Officer is extremely premature and such an order cannot be sustained.

5. The scheme of the Probation of Offenders Act is to extend the benefit contained therein to the accused who is found guilty of an offence. Perusal of Rule 25 of the Goa, Daman and Diu Probation of Offenders Rules 1974, which Rules have been framed under sub-section (3) of Section 17 of the Probation of Offenders Act, contemplate a direction being issued by the Court to the Probation Officer to inquire into the character and antecedents of the accused, the circumstances in which the offence was committed and other matters and to submit a report on the prescribed date which should be the date of delivering the judgment. The said Rule further

mandates that the Court shall consult the report only after finding the accused guilty and if the accused is not found guilty, the report should be returned back to the Probation Officer concerned for future reference.

6. The Applicant has annexed the Order sheets of the criminal cases and perusal of the order sheets does not indicate that the Trial Court has passed any formal order calling for any report from the Probation Officer. Be that as it may, the calling of the report from the Probation Officer even before the framing of charge is certainly not desirable. The stage, therefore, is extremely premature. In view of this, the order calling for the report from the Probation Officer is quashed and set aside.

7. Accordingly, the order passed by the learned Trial Court, dated 18.11.2003 directing the Applicant/accused to cooperate in the inquiry is also quashed and set aside. The learned Magistrate, may call for the report at the proper stage envisaged under the Probation of Offenders Act. Criminal Misc. Application allowed accordingly. No order as to costs.

sl. P.V. HARDAS, J.